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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 CORPORATE EXPRESS DOCUMENT &  
10 PRINT MANAGEMENT, INC.,

11 Plaintiff,

12 v.

13 ROBERT HOLT, *et al.*

14 Defendants.

Case No. C06-964RSL

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
EXPEDITED DISCOVERY AND FOR  
A PROTECTIVE ORDER

16 This matter comes before the Court on a motion filed by plaintiff Corporate Express  
17 Document & Print Management, Inc. (“CEDPM”) to conduct expedited discovery prior to the  
18 Rule 26(f) conference. (Dkt. #5). Plaintiff alleges that its former employee, defendant Robert  
19 Holt, is violating his non-competition agreement with plaintiff through his work for his current  
20 employer, defendants Merrill Corporation and Merrill Communications LLC (collectively,  
21 “Merrill”). Plaintiff and Merrill are competitors. Plaintiff plans to file a motion for a  
22 preliminary injunction.

23 CEDPM has shown good cause to conduct early discovery, and Merrill agrees that it is  
24 warranted. Holt has not responded to the motion. Accordingly, the Court will permit the parties  
25 to conduct discovery prior to the conference. The parties disagree, however, regarding the  
26 timing and scope of discovery. Plaintiff also seeks a protective order.

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28 ORDER GRANTING IN PART AND  
DENYING IN PART DISCOVERY MOTION - 1

1     **A.     Timing and Scope of Discovery**

2         Plaintiff requests permission to serve 10 interrogatories and 15 requests for production.  
3 Merrill agrees to the numbers but argues that discovery should be mutual. The Court agrees.  
4 Therefore, each party may serve up to 10 interrogatories and 15 requests for production on each  
5 of the other parties prior to the Rule 26(f) conference.

6         Although the parties agree to providing expedited responses, they disagree about the  
7 appropriate length of the response period. The timing should allow plaintiff to expeditiously  
8 move for injunctive relief, if warranted, while providing the parties adequate time to prepare  
9 witnesses and documents. The Court also considers the fact that the parties have had notice of  
10 the likely discovery topics through the pleadings and the memoranda related to this motion.  
11 Plaintiff seeks discovery responses within 7 calendar days. Merrill argues that 20 days to  
12 respond, with objections served within 15 days, is more reasonable. Parties shall serve their  
13 responses and objections within 7 judicial days after service of the requests. Plaintiff also seeks  
14 to take depositions with 3 calendar days notice. Merrill contends that the order should permit  
15 depositions with 10 calendar days notice. The Court finds that 5 judicial days notice is  
16 sufficient for the depositions. The parties should make every effort to schedule the depositions  
17 for a mutually convenient time and date.

18         Plaintiff seeks to limit the subjects of early discovery to topics relevant to its motion for a  
19 preliminary injunction, while Merrill argues that it should be allowed to explore topics to  
20 develop its defense and defeat any preliminary injunction motion. The Court agrees that the  
21 scope of discovery should be broader than plaintiff proposes to ensure fairness, efficiency, and  
22 to take into account the fact that the parties' ability to take discovery is subject to the numerical  
23 and frequency limits in the discovery rules. Plaintiff shall be allowed to conduct discovery  
24 regarding the topics listed in bullet points on pages 5-6 of its motion and in its proposed order,  
25 and Merrill will be allowed to conduct discovery on the topics listed in its proposed order.  
26 Those topics appear reasonably calculated to lead to the discovery of admissible evidence and

1 the other party did not object to them.

2 **B. Protective Order**

3 The Court denies plaintiff's request to sign its proposed protective order for two reasons.  
4 First, based on the parties' submissions, it appears that they will be able to agree on a proposed  
5 protective order, which is preferable. Second, even if the parties had agreed to the terms of the  
6 proposed protective order, the Court would not sign it. The proposed order does not comply  
7 with the Local Rules or this district's electronic filing procedures for filing documents under  
8 seal.<sup>1</sup> The Court will not sign stipulated protective orders to authorize documents to be filed  
9 under seal simply based on the fact that they were marked by the parties as confidential in the  
10 course of discovery. "There is a strong presumption of public access to the court's files and  
11 records which may be overcome only on a compelling showing that the public's right of access  
12 is outweighed by the interests of the public and the parties in protecting files, records, or  
13 documents from public review." Local Rule CR 5(g)(1). The proposed order contains no  
14 description of "confidential" documents and gives the parties sole discretion in determining  
15 which documents to file under seal. Plaintiff has not made a compelling showing that the  
16 public's and the parties' interests in protecting the documents marked "confidential" from public  
17 view outweigh the public's right of access. Furthermore, the proposed order purports to prohibit  
18 the Court and its personnel from disclosing "confidential" documents or the information  
19 contained therein or timely responding to a valid subpoena. Such limitations on the Court's  
20 ability to maintain and produce public records or utilize "confidential" information in its orders  
21 are unacceptable. Moreover, the proposed order states that any person who receives confidential  
22 documents submits to the jurisdiction of the Court. This Court, however, would not find that

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<sup>1</sup> Parties seeking an order to seal any documents must provide a specific description of  
25 particular documents or categories of documents they seek to protect and "*a clear statement of*  
26 *the facts* justifying a seal and overcoming the strong presumption in favor of public access."  
27 Local Rule CR 5(g)(2) (emphasis added). The facts supporting any motion to seal must be  
28 provided by declaration or affidavit.

1 due process requirements for personal jurisdiction had been met based solely on the agreement  
2 between the *parties* and a third party's receipt of documents.<sup>2</sup> Although the parties may agree  
3 on confidentiality among themselves, when they request that the Court be involved, they must  
4 make the requisite showing.

5 For all of the foregoing reasons, the Court GRANTS IN PART AND DENIES IN PART  
6 plaintiff's motion for expedited discovery and for a protective order (Dkt. #5).

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8 DATED this 28th day of July, 2006.  
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11 Robert S. Lasnik  
12 United States District Judge  
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25 <sup>2</sup> If the parties intend to resubmit a proposed protective order, they should either remove  
26 paragraph 24 or rewrite it to include that the person or entity has signed Appendix A or B.  
27 Signing one of the appendices reflects an agreement to submit to the jurisdiction of this Court,  
whereas the currently-drafted provision in the protective order does not.